

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Federal-State Joint Board on Universal Service
Applications for Review of
RCC Holdings, Inc. Designation as an Eligible
Telecommunications Carrier in the State of
Alabama
Cellular South License, Inc. Designation as an
Eligible Telecommunications Carrier in the State
of Alabama
NPCR, Inc. d/b/a Nextel Partners Designation as
an Eligible Telecommunications Carrier in the
States of Alabama, Florida, Georgia, Tennessee,
and the Commonwealths of Pennsylvania and
Virginia
Nextel Partners of Upstate New York, Inc. d/b/a
Nextel Partners Designation as an Eligible
Telecommunications Carrier in the State of New
York
CC Docket No. 96-45

MEMORANDUM OPINION AND ORDER

Adopted: February 7, 2012

Released: February 10, 2012

By the Commission:

I. INTRODUCTION

1. This order addresses three applications for review filed by the Alabama Rural Local Exchange Carriers (Alabama Rural LECs) and the Rural Local Exchange Carriers (Rural LECs) (collectively, Petitioners) pursuant to section 1.115 of our rules.1 The Petitioners request review of three

1 47 C.F.R. § 1.115(a) (“Any person aggrieved by any action taken pursuant to delegated authority may file an application requesting review of that action by the Commission.”); see Federal-State Joint Board on Universal Service, RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama, CC Docket 96-45, Application for Review of the Alabama Rural Local Exchange Carriers (filed Dec. 23, 2002) (Alabama Rural LEC RCC Holdings Application for Review); Federal-State Joint Board on Universal Service, Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama, CC Docket 96-45, Application for Review of the Alabama Rural Local Exchange Carriers (filed Dec. 30, 2002) (Alabama Rural LEC (continued....))

separate Wireline Competition Bureau (Bureau) orders, which designated the following entities as eligible telecommunications carriers: (1) RCC Holdings, Inc. (RCC Holdings) and (2) Cellular South License, Inc. (Cellular South) as eligible telecommunications carriers (ETCs) in the state of Alabama,² and (3) NPCR, Inc. d/b/a Nextel Partners (Nextel) as an ETC in Alabama, Florida, Georgia, Pennsylvania, Tennessee, Virginia, and New York.³ For the reasons set forth below, we affirm the *RCC Holdings*, *Cellular South*, and *Nextel Orders* and deny all three applications for review.

II. BACKGROUND

2. Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.”⁴ Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.⁵

3. Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations.⁶ Section 214(e)(6) directs the Commission, upon request, to designate as an ETC “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”⁷ Under section 214(e)(6), the Commission may, with respect
(Continued from previous page) _____

Cellular South Application for Review); Federal-State Joint Board on Universal Service, NPCR, Inc. d/b/a Nextel Partners Petition for Designation as an Eligible Telecommunications Carrier in Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee, and Virginia, CC Docket 96-45, Application for Review of the Rural Local Exchange Carriers (filed Sept. 24, 2004) (Rural LECs Nextel Application for Review).

² See Alabama Rural LEC RCC Holdings Application for Review at 1; Alabama Rural LEC Cellular South Application for Review at 1; see also *Federal-State Joint Board on Universal Service; RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, Memorandum Opinion and Order, 17 FCC Rcd 23532 (Wireline Comp. Bur. 2002) (*RCC Holdings Order*); *Federal-State Joint Board on Universal Service; Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, Memorandum Opinion and Order, 17 FCC Rcd 24393 (Wireline Comp. Bur. 2002) (*Cellular South Order*).

³ See Rural LECs Nextel Application for Review at 1; see also *Federal-State Joint Board on Universal Service; NPCR, Inc. d/b/a Nextel Partners Petition for Designation as an Eligible Telecommunications Carrier in Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee, and Virginia*, CC Docket No. 96-45, Order, 19 FCC Rcd 16530 (Wireline Comp. Bur. 2004) (*Nextel Order*). We note that Sprint-Nextel subsequently agreed to a five-year phase-out of its competitive ETC high-cost support as part of its transaction with Clearwire. *Applications of Sprint Nextel Corporation and Clearwire Corporation for Consent to Transfer Control of Licenses, Leases and Other Authorizations, WT Docket No. 08-94, File Nos. 0003462540, et al., Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 17570, 17612, para. 108 (2008).

⁴ 47 U.S.C. § 254(e).

⁵ 47 U.S.C. § 214(e)(1).

⁶ 47 U.S.C. § 214(e)(2); see *Promoting Deployment and Subscriberhip in Unserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, para. 93 (2000).

⁷ 47 U.S.C. § 214(e)(6); see, e.g., *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563 (2004) (*Virginia Cellular Order*); *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422 (2004) (*Highland Cellular Order*).

to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of section 214(e)(1).⁸ Before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.⁹ The Commission delegated authority to the Bureau to perform ETC designations.¹⁰

4. To receive ETC designation from this Commission, a carrier must submit a petition that includes: (1) a certification and brief statement of supporting facts demonstrating that the petitioner is not subject to the jurisdiction of a state commission; (2) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c); (3) a certification that the petitioner offers or intends to offer the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services;” (4) a description of how the petitioner “advertise[s] the availability of [supported] services and the charges therefor using media of general distribution;” and (5) if the petitioner meets the definition of a “rural telephone company” pursuant to section 3(37) of the Act, the petitioner must identify its study area, or, if the petitioner is not a rural telephone company, it must include a detailed description of the geographic service area for which it requests an ETC designation from the Commission.¹¹

5. *RCC Holdings, Cellular South, and Nextel ETC Designation Orders.* Pursuant to section 214(e)(6) of the Act, RCC Holdings, Cellular South, and Nextel, three commercial mobile radio service (CMRS) providers, each filed petitions with the Commission seeking ETC designation throughout their licensed service areas.¹² The Bureau evaluated each petition and determined that each petitioner satisfied

⁸ 47 U.S.C. § 214(e)(6).

⁹ *Id.*; 47 C.F.R. § 54.202(c); *see also Federal State Joint Board on Universal Service*, 20 FCC Rcd 6371, 6388–96, paras. 40–57 (2005) (*ETC Designation Order*); *Virginia Cellular Order*, 19 FCC Rcd at 1575, para. 27; *Highland Cellular Order*, 19 FCC Rcd at 6431–32, para. 21. The Commission places the burden on the ETC applicant to demonstrate that the public interest is served. *ETC Designation Order*, 20 FCC Rcd at 6390, para. 44. The Commission adopted one set of criteria for evaluating the public interest for ETC designations for both rural and non-rural areas. *Id.* at 6389–90, paras. 42–43; *see also Virginia Cellular*, 19 FCC Rcd 1563, 1564, 1565, 1575–76, 1584–85, paras. 1, 4, 27, 28, 46; *Highland Cellular Order*, 19 FCC Rcd at 6422, 6438, paras. 1, 33.

¹⁰ *See Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997).

¹¹ *See id.* at 22948–49; 47 U.S.C. §3(37).

¹² *See* RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, CC Docket No. 96-45 (filed Mar. 19, 2002); Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, CC Docket No. 96-45 (filed June 4, 2002); NPCR, Inc. d/b/a Nextel Partners Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, CC Docket No. 96-45 (filed Apr. 4, 2003); NPCR, Inc. d/b/a Nextel Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45 (filed Sept. 16, 2003); NPCR, Inc. d/b/a Nextel Petition for Designation as an Eligible Telecommunications Carrier in the State of Georgia, CC Docket No. 96-45 (filed July 10, 2003); Nextel Partners of Upstate New York, Inc. d/b/a Nextel Partners for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45 (filed Apr. 3, 2003); NPCR, Inc. d/b/a Nextel Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania, CC Docket No. 96-45 (filed Apr. 3, 2003); NPCR, Inc. d/b/a Nextel Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee, CC Docket No. 96-45 (filed June 12, 2003); NPCR, Inc. d/b/a Nextel Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45 (filed Apr. 23, 2003).

the statutory requirements and Commission rules to be designated as an ETC in the relevant portions of their licensed service areas.¹³

6. *Applications for Review.* The Alabama Rural LECs object to the Bureau's decisions in the *RCC Holdings Order* and the *Cellular South Order*.¹⁴ In its applications for review, the Alabama Rural LECs argue that the Bureau should not have ruled on competitive ETC designation requests until the Commission resolved broader issues relating to the receipt of high-cost universal service support.¹⁵ Specifically, the Alabama Rural LECs assert that Bureau should not have issued the decisions until the full Commission reevaluated fundamental issues regarding universal service support for competitive ETCs, such as the "identical support" rule that bases a competitive ETC's support on the incumbent carrier's support, the public interest aspects of designating competitive ETCs in rural areas, and the potential impact on the size of the universal service fund.¹⁶ The Alabama Rural LECs also state that the Bureau erroneously relied on the *Western Wireless Order* to justify its decision to grant the petitions.¹⁷

7. The Rural LECs filed an application for review seeking review of the Bureau's decision in the *Nextel Order*. The Rural LECs argue that the "public interest is harmed" by granting ETC designation to a carrier pursuant to the standards established in the *Virginia Cellular Order* because the Commission had issued a notice of proposed rulemaking seeking comment on the process for designating ETCs.¹⁸

III. DISCUSSION

8. We deny Petitioners' applications for review of the *RCC Holdings*, *Cellular South*, and *Nextel Orders*. In so doing, we affirm these orders and conclude that the Bureau, acting under delegated authority, properly designated RCC Holdings and Cellular South as ETCs in Alabama, and Nextel as an ETC in Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee, and Virginia, under the standards in effect at that time.

¹³ See *RCC Holdings Order*, 17 FCC Rcd at 23536, para. 11; *Cellular South Order*, 17 FCC Rcd at 24397, para. 11; *Nextel Order*, 19 FCC Rcd at 16531, para. 1.

¹⁴ Additionally, the Alabama Rural LECs state that the West Point wire center within the Interstate Telephone Company's study area encompasses two states, Alabama and Georgia, and argue that the Commission must revise RCC's ETC designation to include only the portion of the wire center that is located in the state of Alabama. See Alabama Rural LEC RCC Holdings Application for Review at 5, 23. However, pursuant to section 1.115(c) of our rules, we are barred here from considering this issue because the Bureau was not previously afforded an opportunity to consider this matter. See 47 C.F.R. § 1.115(c); see also Alabama Rural LEC RCC Holdings Application for Review at 23 (noting that the issue was not addressed in the Bureau's decision).

¹⁵ Alabama Rural LECs RCC Holdings Application for Review at 2-4, 9-21; Alabama Rural LECs Cellular South Application for Review at 2-4, 9-21.

¹⁶ Alabama Rural LECs RCC Holdings Application for Review at 2-4, 9-21; Alabama Rural LECs Cellular South Application for Review at 2-5, 9-21.

¹⁷ Alabama Rural LECs RCC Holdings Application for Review at 5, 21-23; Alabama Rural LECs Cellular Application for Review at 5, 21-23; see *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, CC Docket No. 96-45, Memorandum Opinion and Order, 16 FCC Rcd 18133, 18137, para. 12 (2001) (*Western Wireless Order*) (designating Western Wireless Corporation as an ETC on the Pine Ridge Reservation in South Dakota, stating that the designation of qualified ETCs promotes competition and benefits consumers by increasing customer choice, innovative services, and new technologies).

¹⁸ Rural LECs Nextel Application for Review at i (citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, 19 FCC Rcd 10800 (2004)).

9. In the applications for review, Petitioners do not challenge that RCC Holdings, Cellular South, and Nextel satisfy the requirements to be designated an ETC as set forth in 214(e)(6), but raise concerns that the designations were not in the public interest as required by section 214(e)(6). Yet, Petitioners do not offer specific evidence that the Bureau's designations were contrary to the public interest. Instead, Petitioners essentially argue that the public interest evaluation could only be made following the Commission's consideration of broader universal service reform. We disagree.¹⁹ After reviewing the record and evaluating arguments raised by the Alabama Rural LECs that the designations were not consistent with the public interest, the Bureau concluded that designations were in the public interest.²⁰ We conclude that the Bureau properly applied the public interest standard in effect at the time to the facts before it in designating RCC Holdings, Cellular South, and Nextel as ETCs.²¹

10. In the applications for review of the *RCC Holdings* and *Cellular South Orders*, Petitioners also allege that it was in "error" for the Bureau to find that concerns regarding comprehensive reform of the competitive ETC process were outside the scope of the designation orders.²² Similarly, in the application for review of the *Nextel Order*, the Alabama Rural LECs argue that the Commission

¹⁹ We note that the Commission recently took action to comprehensively reform and modernize the universal service high-cost program, including the manner in which ETC support is determined, by creating the Connect America Fund (CAF), which will ultimately replace all existing high-cost support mechanisms. As part of this reform, existing support to competitive ETCs will be phased out over a five-year period beginning July 1, 2012, with limited exceptions. Competitive mobile ETCs receiving existing support, as well as any new mobile ETCs, will be eligible to compete for support offered in the CAF's Mobility Fund, which will offer support to ensure the availability of mobile broadband networks in areas where it might not be offered absent such support. *See Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (*CAF/ICC Transformation Order*). The *CAF/ICC Transformation Order* amended our rules for federal ETC designations, and the subsequent *CAF/ICC Clarification Order* eliminated the disaggregation rule in light of the elimination of the identical support rule. *See Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Order, DA 12-147, para. 16 (Wireline Comp. Bur. and Wireless Telecom. Bur. rel. Feb. 3, 2012) (*CAF/ICC Clarification Order*). This Memorandum Opinion and Order upholding past decisions by the Wireline Competition Bureau does not prejudge how the Commission will evaluate ETC applications in the future under the newly amended rules for ETC designations.

²⁰ 47 U.S.C. §§ 214(e)(6); *see RCC Holdings Order*, 17 FCC Rcd at 23540–42, paras. 22–26; *Cellular South Order*, 17 FCC Rcd at 24402, paras. 24–26; *Nextel Order*, 20 FCC Rcd at 16536–40, paras. 15–22.

²¹ The *RCC Holdings* and *Cellular South Orders* were adopted in 2002, prior to the *Virginia Cellular Order* and *Highland Cellular Orders*, which revised the ETC designation framework for rural areas. *See Virginia Cellular Order*, 19 FCC Rcd at 1565, para. 4; *Highland Cellular Order*, 19 FCC Rcd at 6438, para. 33. As a result, we review these two applications for review under the standard that existed at that time. The 2004 *Nextel Order* followed the *Virginia Cellular Order* and *Highland Cellular Orders* and the Bureau properly applied the framework for ETC designation consistent with these orders. *See ETC Designation Order*, 20 FCC Rcd at 6380, para. 20 (outlining a framework for reviewing ETC applications, consistent with the analysis in the *Virginia Cellular Order* and the *Highland Cellular Order*).

²² Alabama Rural LECs RCC Holdings Application for Review at 2; Alabama Rural LECs Cellular South Application for Review at 2.

should reverse the Bureau's decision until completion of comprehensive reform relating to pending ETC designation issues.²³ We disagree. The Bureau was duly authorized to act under rules and policies in effect at the time, and was not prohibited from acting on pending ETC designation applications while the Commission was considering possible changes to the ETC designation process and the distribution of high-cost universal service support. The Bureau also acted properly in determining that certain pending matters were beyond the scope of the individual ETC designations, and it correctly applied the relevant precedent regarding the public interest analysis.²⁴

11. Finally, we disagree with the Alabama Rural LECs' argument that the Bureau erroneously relied on the *Western Wireless Order* to justify its decision to grant the petitions. The Bureau did not conclude that the facts present in the RCC ETC designation were identical to those in the Western Wireless designation. In each instance, however, the Bureau evaluated the record, and considered a variety of factors in determining that the designations were consistent with the public interest pursuant to section 214(e)(6) of the Act.²⁵ We therefore deny Petitioners' three applications for review and affirm the Bureau's decisions in the *RCC Holdings*, *Cellular South*, and *Nextel Orders*.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, that pursuant to sections 1, 4(i), 214(e), and 254 of the Commissions Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 214(e), and 254, and section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, that the Application for Review of the Designation of RCC Holdings, Inc. as an Eligible Telecommunications Carrier in the State of Alabama filed by the Alabama Rural Local Exchange Carriers IS DENIED.

13. IT IS FURTHER ORDERED, that pursuant to sections 1, 4(i), 214(e), and 254 of the Commissions Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 214(e), and 254, and section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, that the Application for Review of the Designation of Cellular South License, Inc. as an Eligible Telecommunications Carrier in the State of Alabama filed by the Alabama Rural Local Exchange Carriers IS DENIED.

14. IT IS FURTHER ORDERED, that pursuant to sections 1, 4(i), 214(e), and 254 of the Commissions Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 214(e), and 254, and section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, that the Application for Review of the Designation of NPCR, Inc. d/b/a Nextel Partners as an Eligible Telecommunications Carrier in the States of Alabama, Florida, Georgia, Tennessee, and the Commonwealths of Pennsylvania and Virginia and Nextel Partners of Upstate New York, Inc. d/b/a Nextel Partners Designation as an Eligible Telecommunications Carrier in the state of New York filed by the Rural Local Exchange Carriers IS DENIED.

²³ Alabama Rural LECs Nextel Application for Review at i-ii.

²⁴ See, e.g., *Western Wireless Order*, 16 FCC Rcd at 18137-39, paras. 11-16; *Virginia Cellular Order*, 19 FCC Rcd at 1574-80, paras. 26-35.

²⁵ 47 U.S.C. § 214(e)(6); see *RCC Holdings Order*, 17 FCC Rcd at 23540-42, paras. 22-26; *Cellular South Order*, 17 FCC Rcd at 24402, paras. 24-26; *Nextel Order*, 20 FCC Rcd at 16536-40, paras. 15-22.

15. IT IS FURTHER ORDERED that, pursuant to section 1.103(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 1.103(a), this memorandum opinion and order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary